

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 15 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARTIN CHAVEZ-CUEVAS,

Defendant - Appellant.

No. 02-30213

D.C. No. CR-00-00033-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Submitted November 18, 2005**
Seattle, Washington

Before: HANSEN,*** W. FLETCHER, and BYBEE, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable David R. Hansen, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Martin Chavez-Cuevas appeals a jury conviction and 360-month sentence imposed for conspiracy to distribute, and possess with intent to distribute, methamphetamine.

Chavez-Cuevas requests reversal of his conviction on the ground that the court reporter failed to transcribe sidebar conversations. “[W]hile court reporters are required by the Court Reporters Act, 28 U.S.C. § 753(b)(1) (1982), to record verbatim all proceedings in open court, their failure to do so does not require a per se rule of reversal.” *United States v. Carrillo*, 902 F.2d 1405, 1409 (9th Cir. 1990). Rather, “the appellant must demonstrate that the missing portion of the transcript specifically prejudices his appeal before relief will be granted.” *Id.* (citation omitted). Prejudice is not assumed simply because appellant has new counsel on appeal, *United States v. Antoine*, 906 F.2d 1379, 1381 (9th Cir. 1990), or because he claims “he cannot know of ‘potential unknown errors.’” *United States v. Anzalone*, 886 F.2d 229, 232 (9th Cir. 1989).

Chavez has failed to articulate any specific prejudice suffered as a result of the omitted sidebars. Given the circumstances of this case, a remand will not improve the record for purposes of identifying specific prejudice.

The judgment of the district court is AFFIRMED in all respects except for a limited REMAND for possible resentencing under *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005).